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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 25.09.2026*
Judgment pronounced on: 19.11.2026
Judgment uploaded on: 19.11.2026

CNR No. DLHC010735692012

\+ **CS(OS) 1452/2012**

MAHER ELAHI & ORS. .....Plaintiffs

Through: Mr. Jagjit Singh, Senior Advocate with Ms. Preet Singh and Mr. Abhijeet Singh, Advocates

versus

AMAN ULLAH KHAN .....Defendant

Through: Mr. Siddharth Khattar, Mr. Divij Andley and Mr. Gaurav Raj Sharma, Advocates

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

I.A. 5063/2026

1. By way of the present application filed under Section 151 of the Code of Civil Procedure, 1908 [hereafter '**CPC**'] read with Order XVI Rule 1(2) of the CPC, the applicants/plaintiffs seek summoning of the witnesses at serial nos. 7, 12, 13 and 14 of their list of witnesses before the learned Local Commissioner appointed for recording of evidence.

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2. The application was first listed before this Court on 24.02.2026, when notice was issued and the matter was referred to the learned Joint Registrar (Judicial) for completion of pleadings. The pleadings stood completed *vide* order dated 09.07.2026, whereafter the matter was placed before this Court. During this period, no further proceedings for recording of evidence took place before the learned Local Commissioner.

3. The facts leading to the filing of the present application are that the present suit seeks specific performance of the Agreement to Sell dated 17.03.2008 [hereafter '**the Agreement**'] in respect of property bearing no. B-4, Nizamuddin West, New Delhi [hereafter '**suit property**'], or, in the alternative, damages. The total sale consideration under the Agreement was Rs. 5.05 crores, out of which the plaintiffs claim to have paid Rs. 3.35 crores till 23.08.2008, with the balance amount payable by 31.08.2008. The plaintiffs contend that they withheld the balance consideration upon learning that the suit property had been mortgaged with Citibank. The defendants, on the other hand, dispute the plaintiffs' claim of readiness and willingness, as well as their financial capacity to pay the balance consideration.

4. The issues were framed by this Court *vide* order dated 31.01.2014, which are as under:

> "(i) Whether the plaintiff has been ready and willing to perform his part of the agreement dated 17.3.2008? **OPP**
>
> (ii) Whether the suit is barred by limitation? **OPD**

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(iii) Whether the suit is not maintainable due insufficient Court fees? **OPD**

(iv) Whether the defendant was having free title of the suit property as on 31.8.2008, the due date of final payment and whether the same was lying mortgaged with Citi Bank, if so its effect? **OPD**

(v) Whether the plaintiff was aware of the financial arrangement between the defendant and the Bank? **OPD**

(vi) Whether the defendant is entitled to forfeit the entire advance money paid by the plaintiff to the defendant in terms of the Agreement to Sell dated 17.3.2008 and/or due to damages suffered by defendant? **OPD**

(vii) Whether the plaintiff is entitled to relief of Specific performance and/or in the alternative decree of damages? **OPP**

(viii) Relief."

5. On 09.10.2018, the learned Joint Registrar (Judicial), while deciding the plaintiffs' application under Order VII Rule 14 of the CPC, being *I.A. 5813/2018*, declined to take on record certain additional documents, i.e. the UCO Bank passbook, the J&K Bank statement and the Income Tax Return of plaintiff no. 1 for the financial year 2014-15. These documents were sought to be placed on record to demonstrate the plaintiffs' financial capacity to pay the balance sale consideration. However, since the documents pertained to the period after institution of the suit, the learned Joint Registrar declined to take them on record, observing as follows:

"Present IA has been moved by plaintiff for placing on record additional documents which are agreement dt.13.3.08, original pass book of UCO Bank & original statement of J&K Bank and IT return of plaintiff no.l for financial year 2014-15.

Learned counsel for both parties have argued on lines of their application & reply.

In so far as UCO Bank passbook & statement of J&K Bank and ITR are concerned, same admittedly reflect entry and figure post the filing of the present suit. This is a suit for specific performance of the contract.

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18:00:29

> In my opinion the documents which can show the capability of plaintiff to pay the balance consideration on or before institution of the suit are only relevant. Pass book of UCO Bank and statement of J&K Bank and copy of return sought to be placed on record are related to the period after institution of the suit. These documents are not relevant and cannot be taken on record…"

6. The aforesaid order was challenged by the plaintiffs by way of a chamber appeal, being *O.A. 157/2018*. However, the said appeal was withdrawn on 09.01.2024 after some arguments were addressed. Thereafter, the plaintiffs filed *I.A. 8861/2024* seeking permission to summon additional witnesses for the purpose of proving the very same documents which had earlier been declined to be taken on record *vide* order dated 09.10.2018. The plaintiffs sought to distinguish the two applications by contending that the earlier application was for placing additional documents on record, whereas the present application was for summoning witnesses to prove those documents. The learned Joint Registrar (Judicial), however, did not accept this distinction and dismissed the said application *vide* order dated 22.09.2025.

7. *Vide* order dated 24.11.2025, Sh. Brijesh Kumar Garg, District & Sessions Judge (Retd.), was appointed as the learned Local Commissioner for recording of evidence. After recording the evidence of PW-1 and PW-2, the learned Local Commissioner fixed 28.02.2026 for recording the evidence of the remaining plaintiffs' witnesses. Thereafter, the present application came to be filed by the plaintiffs, seeking summoning of the witnesses at serial nos. 7, 12, 13 and 14 of their list of witnesses. The details of the said witnesses and

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Signing Date:19.11.2026
18:00:29

the purpose for which they are sought to be summoned, as set out in the present application, are extracted hereunder:

Witness in the list	Full Name and Complete Address	Facts sought to be proved by the evidence of the witness	Documents sought to be proved and brought by the witness
7.	Concerned official from Revenue Department of Govt. of NCT of Delhi, C/o Govt. of NCT, Secretariat, ITO, New Delhi	To prove the circle rate for the year 2007-08 of the properties at Nizamuddin, west, New Delhi declared by Govt. of NCT of Delhi	To bring the records of the circle rate for the year 2007-08 of the properties at Nizamuddin, west, New Delhi declared by Govt. of NCT of Delhi
12.	Concerned official from Punjab National Bank, Railway Road, Farrukhabad, U.P.		To bring the record of Bank A/c.0169000100 267466, (Old No.26346) of Mrs. Nazma Noor for the period of Jan. 2007 onwards
13.	Concerned official from Oriental Bank of Commerce, Rakhab Ganj Khurd, Farrukhabad, U.P.		To bring the record of Bank A/c. No.01242010006800 (Old No.4872) for the period of Jan. 2007 onwards, of Mr. Noor Ahmad
14.	Concerned official Axis Bank Ltd. To bring the record of Citi Bank, now merged with Axis Bank Ltd **Address** 1st floor Himalya House K.G Marg Connaught Place, New Delhi.	To prove that property No. B-4, Nizamuddin West, New Delhi was mortgaged with City Bank with date of loan as 9.11.2005 And only released in March 2010	To bring the complete records of City Bank, Citi bank Connaught place, Home loan account **No.118688** of M/s. Aman Shilpi Agencies Pvt. Ltd. with complete loan application and release of property from mortgage in March 2010. Record of property **No. B-4, Nizamuddin West, New Delhi** owned by Mr. Uman Ullah Khan, mortgaged under housing loan with Citi Bank. The Citi bank has merged with Axis Bank Ltd

8. The learned senior counsel appearing for the plaintiffs submits

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Signing Date:19.11.2026
18:00:29

that the witnesses mentioned in the list of witnesses are officials of various departments and banks, whose attendance cannot be secured without the process of the Court. It is further submitted that their evidence is relevant and bears directly upon the issues framed in the present suit.

9. On the other hand, the learned counsel appearing for the defendant submits that there is no objection to summoning the witnesses mentioned at serial nos. 7 and 14 of the list of witnesses. However, he opposes the summoning of the witnesses at serial nos. 12 and 13, who are sought to be called for producing the bank statements of Mrs. Nazma Noor (plaintiff no. 4) and Mr. Noor Ahmad (plaintiff no. 3), for the period commencing from January 2007 onwards. It is contended that the said bank statements ought to have been in the power and possession of the plaintiffs and could have been filed along with the plaint, but the plaintiffs consciously chose not to place them on record. It is further submitted that the present suit pertains to the year 2012 and the contents of the application clearly reveal an attempt on the part of the plaintiffs to introduce the said documents indirectly through the summoned witnesses. According to the learned counsel, what cannot be permitted directly cannot be permitted indirectly by summoning witnesses, and the plaintiffs ought to have sought permission to place the said documents on record by filing an appropriate application under Order VII Rule 14 of the CPC.

10. This Court has **heard** arguments addressed on behalf of both

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18:00:29

the parties and has perused the material available on record.

11. In the present case, it is undisputed that the witnesses at serial nos. 7 and 14 are already named in the list of witnesses filed by the plaintiffs. Their evidence relates to Issue Nos. (vii) and (iv), respectively. Further, the defendant has no objection to their being summoned. Accordingly, their summoning does not call for any further consideration.

12. The controversy in the present application is, therefore, confined to the summoning of witnesses at serial nos. 12 and 13.

13. Order XVI Rule 1 of the CPC provides as under:

> "**1. List of witnesses and summons to witnesses**.—(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.
>
> (2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.
>
> (3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.
>
> (4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule (1)."

14. Rule 7 of Chapter XI of the Delhi High Court (Original Side) Rules, 2018 is also to similar effect. Further, Section 5 of the Bankers' Books Evidence Act, 1891 makes a bank officer

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18:00:29

compellable to prove the entries in the bank's books "*by order of the Court or a Judge made for special cause*", while Section 6 empowers the Court to direct production of certified copies of entries in bankers' books.

15. Coming to the rival contentions, this Court is of the view that the objection raised by the defendant does not merit acceptance. At the outset, it is pertinent to note that the witnesses at serial nos. 12 and 13 are not new witnesses sought to be introduced by the plaintiffs at this stage. They find mention at the very same serial numbers in the list of witnesses dated 24.02.2016, wherein the purpose of summoning them was specified as production of the records of the respective bank accounts "*for the period Jan., 2007 to Sept., 2009*". The said list has been on record for nearly a decade. Thus, the defendant was aware, from the very beginning, that the plaintiffs intended to summon the concerned bank officials and produce the records of these accounts. There is, therefore, no question of any surprise or introduction of an entirely new case at this stage.

16. Further, the bank accounts in question do not introduce any new factual foundation into the suit. The documents filed along with the plaint (Index-4, S. No. 2) include copies of cheque no. 367603 drawn on Oriental Bank of Commerce, Farrukhabad, and cheque no. 170923 drawn on Punjab National Bank, Farrukhabad, both dated 29.04.2008 and for an amount of Rs. 10,00,000/- each, which are stated to have been issued towards payment to the defendant. Thus, the transactions through the very same bank accounts already find

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Signing Date:19.11.2026
18:00:29

mention in the documents filed with the plaint. The bank statements are sought to be produced to substantiate the financial transactions and the availability of funds in the said accounts during the relevant period.

17. The evidence sought to be led through these witnesses is also relevant to Issue No. (i), which concerns the readiness and willingness of the plaintiffs to perform their part of the Agreement. The financial capacity of the plaintiffs to pay the balance sale consideration on or before 31.08.2008 is an important aspect of this issue. In ***U.N. Krishnamurthy v. A.M. Krishnamurthy:*** *Civil Appeal No. 4703 of 2022, decided on 12.07.2022*, the Hon'ble Supreme Court held as under:

> "25. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money."

18. In the present case, the defendant has disputed the financial capacity of the plaintiffs to pay the balance sale consideration and has also cross-examined PW-1 on the source and availability of funds. Once the financial capacity of the plaintiffs has been put in issue, the

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18:00:29

bank records which may have a bearing on the said question are certainly relevant. The defendant cannot, on the one hand, dispute the financial capacity of the plaintiffs and question the source of funds, and, on the other hand, oppose the production of relevant bank records which may assist the Court in determining that very issue.

19. The objection that the plaintiffs ought to have filed an application under Order VII Rule 14 of the CPC also does not, by itself, furnish a ground to decline the present request. Order VII Rule 14(1) and (3) of the CPC deal with documents upon which the plaintiff sues or relies and which are in his possession or power, as well as the consequences of non-production of such documents. Sub-rule (2), on the other hand, contemplates a situation where such a document is not in the possession or power of the plaintiff and requires the plaintiff to state the person in whose possession or power it is. In the present case, what is sought to be summoned is the official record maintained by the concerned banks, through their officials. In any event, the mere fact that the plaintiffs may have had access to their passbooks or account statements would not, by itself, disentitle them from seeking production of the banks' own records through their officials. Thus, the question of admissibility and the evidentiary value of the documents so produced can be considered at the appropriate stage. The defendant shall also be at liberty to raise all permissible objections in that regard.

20. However, this Court notes that the prayer in the present application seeks production of the bank records "*for the period of*

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Jan. 2007 onwards". This is wider than the period specifically mentioned in the list of witnesses dated 24.02.2016, i.e., January 2007 to September 2009. No explanation has been furnished by the plaintiffs for seeking the records beyond the said period. Further, the earlier order dated 09.10.2018, which has attained finality, had declined to take on record certain financial documents pertaining to the period after institution of the suit, on the ground that such documents were not relevant for determining the plaintiffs' financial capacity at the relevant time. The present application cannot be thus used to enlarge the scope of the evidence beyond what was originally disclosed in the list of witnesses or to indirectly introduce financial records pertaining to periods beyond the relevant transaction.

21. Accordingly, while the plaintiffs are entitled to summon the bank officials at serial nos. 12 and 13, it is directed that their evidence shall remain confined to the period from January 2007 to September 2009, as originally specified in the list of witnesses dated 24.02.2016, since such period sufficiently covers the period preceding the Agreement, its execution and the date fixed for payment of the balance sale consideration, i.e. 31.08.2008. To this extent, the objection of the defendant is sustained.

22. Accordingly, the present application is allowed and disposed of with the following directions:

(i) Summons be issued to the witnesses at serial nos. 7, 12, 13 and 14 of the list of witnesses dated 24.02.2016, for the date

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18:00:29

to be fixed by the learned Local Commissioner.

(ii) Since Oriental Bank of Commerce stands amalgamated with Punjab National Bank w.e.f. 01.04.2020, the witnesses at serial nos. 12 and 13 shall be officials of Punjab National Bank, Farrukhabad, who shall produce the records of the respective accounts only for the period from January 2007 to September 2009.

(iv) The learned Local Commissioner is requested to proceed expeditiously with the recording of evidence.

23. The present application is disposed of in above terms.

24. Nothing herein shall nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

CS(OS) 1452/2012

25. List on 08.04.2027.

26. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

NOVEMBER 19, 2026/ns

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